

Message Text

LIMITED OFFICIAL USE

PAGE 01 BANGKO 02539 130614Z

10

ACTION L-02

INFO OCT-01 EA-06 ISO-00 JUSE-00 SCA-01 PM-03 SS-15 SP-02

INRE-00 PRS-01 /031 W

----- 007737

P R 130507Z FEB 75

FM AMEMBASSY BANGKOK

TO STATE WASHDC PRIORITY 751

INFO CSAF/JACI WASHDC

CINCPACAF/JA HICKAM AFB HI

13 AF CLARK AB/JA PI

13 AB ADVON/CC

388 CMBT SPT. GP/JA KORAT RTAFB

LIMITED OFFICIAL USE BANGKOK 2539

STATE PLEASE PASS JUSTICE, ATTENTION: CIVIL DIVISION

STATE FOR OFFICE OF LEGAL ADVISER

E.O. 11652: ,/A

TAGS: MILI, TH

SUBJECT: CIVIL LITIGATION: S. LENG V. KORAT A. B. NCO OPEN
MESS, ET AL.

REF: BANGKOK 2435

SUMMARY: INDIVIDUAL DEFENDANTS HAVE BEEN REASSIGNED OUT OF THAILAND WHICH COULD DEPRIVE COURT OF PERSONAL JURISDICTION OVER THEM. PROCEEDINGS ON 14 FEBRUARY ARE IN THE NATURE OF A SHOW CAUSE HEARING FOR A WRIT OF ATTACHMENT AND NOT FOR PERMISSION TO PROCEED IN FORMA PAUPERIS. COURT MAY NOT PROCEED WITH 14 FEBRUARY HEARING IN ABSENCE OF RETURN OF SERVICE. RECOMMEND INFORMAL PRESENCE AT COURT ON 14 FEBRUARY TO ADVISE THAT REQUESTED INSTRUCTIONS ARE BEING AWAITED IF SUCH IS NECESSARY.

END SUMMARY.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 BANGKO 02539 130614Z

1. SINCE DISPATCH OF REFTEL THE FOLLOWING HAS BEEN
LEARNED:

A. ALL OF THE INDIVIDUALLY NAMED DEFENDANTS,
SSGT. TOMMY E. WILLIAMSON, COL. KENNETH H. GALLAGHER,
AND CMSGT. DONALD G. GOW HAVE BEEN REASSIGNED OUT OF
THAILAND. THE REASSIGNMENT WAS DUE TO THE COMPLETION OF
THEIR NORMAL TOURS.

B. THE PROCEEDINGS SCHEDULED FOR FRIDAY, 14 FEBRUARY,
ARE NOT TO PERMIT THE PLAINTIFF TO PROCEED IN FORMA PAUPERIS
BUT RATHER, ACCORDING TO OTHER PAPERS ON FILE WITH THE
COURT, TO LOOK INTO THE PLAINTIFF'S REQUEST FOR AN
ORDER PROHIBITING THE CLUB FROM TRANSFERRING ITS ASSETS
OUT OF THE BANK OF AMERICA BRANCH AT KORAT RTAFB (LOME-
WHAT LIKE A SHOW CAUSE HEARING FOR THE ISSUANCE OF A
WRIT OF ATTACHMENT). THE PLEADINGS WERE NOT CLEAR AS TO
THE PURPOSE OF THE HEARING AND THEREFORE A SEARCH OF THE
COURT RECORDS WAS CONDUCTED.

2. THE EFFECT OF THE ABSENCE OF THE INDIVIDUALLY NAMED
DEFENDANTS IS NOT CERTAIN. ACCORDING TO SECTION 4 OF
THE THAI CIVIL PROCEDURES CODE, A COURT CANNOT PROCEED
WITH A CASE UNLESS THE DEFENDANTS ARE PROPERLY SERVED
WITHIN THAILAND. NONE OF THE DEFENDANTS HAVE ACTUALLY
BEEN SERVED BUT THE KORAT STAFF JUDGE ADVOCATE INITIALLY
ACCEPTED SERVICE FOR AND IN THE PRESENCE OF SSGT. WILLIAMSON
AND FOR COL. GALLAGHER. UNDER THAI LAW THIS COULD
CONSTITUTE A VALID SERVICE. HOWEVER, THIS SERVICE WAS
THEREAFTER REJECTED BY THE JUDGE ADVOCATE BY LETTER,
WHICH REJECTION THE COURT ACCORDING TO ITS SUBSEQUENT
ACTIONS APPARENTLY ACCEPTED. WHETHER THE COURT WILL
ADHERE TO ITS PREVIOUS DETERMINATION WHEN IT LEARNS OF THE
ABSENCE OF THE DEFENDANTS IS UNKNOWN.

3. AS TO THE ATTACHMENT PROCEEDINGS, THE COURT HAS
PREVIOUSLY INDICATED ITS OPINION THAT THE PROPERTY OF
THE CLUB AS PROPERTY OF A FOREIGN GOVERNMENT IS NOT
SUBJECT TO ATTACHMENT UNDER INTERNATIONAL LAW. ACCORDING
TO COURT RECORDS THAI HEARING WAS FIRST SCHEDULED FOR
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 BANGKO 02539 130614Z

10 JANUARY 1975, AND WAS CONTINUED UNTIL 14 FEB BECAUSE
THE COURT HAD NOT RECEIVED CONFIRMATION FROM THE MINISTRY
OF FOREIGN AFFAIRS THROUGH THE MINISTRY OF JUSTICE THAT THE
DEFENDANTS HAD BEEN SERVED. IT IS PRESUMED THAT THE COURT
REFUSED TO PROCEED IN JANUARY BECAUSE OF SECTION 4 OF THE
CIVIL PROCEDURES CODE REFERENCED ABOVE.

4. CONSISTENT WITH THE TACTICS RECOMMENDED IN REFTEL, WE

BELIEVE THAT THE FIRST STEP SHOULD NOW BE TO QUESTION JURISDICTION OVER THE INDIVIDUAL DEFENDANTS BECAUSE OF A LACK OF PERSONAL SERVICE. UNFORTUNATELY, SPECIAL APPEARANCES ARE NOT AUTHORIZED IN THAI PRACTICE. INSTEAD JURISDICTIONAL QUESTIONS WHEN RAISED ARE DECIDED BY THE COURT AFTER HEARING EVIDENCE ON THE MERITS AS PART OF THE DISPOSITION OF THE WHOLE CASE. IT IS THEREFORE RECOMMENDED THAT WE ADVISE THE COURT OF THE DEPARTURE OF THE THREE INDIVIDUAL DEFENDANTS THROUGH THE MINISTRY OF FOREIGN AFFAIRS AND MINISTRY OF JUSTICE. THIS ADVICE SHOULD BE COUPLED WITH AN EXPRESSED WILLINGNESS TO VOLUNTARILY NEGOTIATE A SETTLEMENT OF THE DISPUTE. IN VIEW OF THE COURT'S ACTION IN JANUARY ON THE FAILURE OF RETURN OF SERVICE WE DO NOT THINK THAT IT WOULD BE NECESSARY OR ADVISABLE TO HAVE ANYONE FORMALLY APPEAR ON FEBRUARY 14TH. IN LIEU OF A FORMAL APPEARANCE, THE THAI ATTORNEY EMPLOYED AT KORAT RTAFB COULD BE PRESENT IN COURT AND COULD, IF IT IS NECESSARY, ADVISE THE COURT THAT THE EMBASSY IS AWAITING REQUESTED INSTRUCTIONS FROM WASHINGTON BEFORE PROCEEDING.

KINTNER

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LITIGATION, MILITARY BASES
Control Number: n/a
Copy: SINGLE
Draft Date: 13 FEB 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: CunninFX
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975BANGKO02539
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750052-0099
From: BANGKOK
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750248/aaaabqlf.tel
Line Count: 136
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 75 BANGKOK 2435
Review Action: RELEASED, APPROVED
Review Authority: CunninFX
Review Comment: n/a
Review Content Flags:
Review Date: 24 JUL 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <24 JUL 2003 by BoyleJA>; APPROVED <20 NOV 2003 by CunninFX>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CIVIL LITIGATION: S. LENG V. KORAT A. B. NCO OPEN MESS, ET AL.
TAGS: MILI, TH, US, (LENG, S), (WILLIAMSON, TOMMY E), (GALLAGHER, KENNETH H), (GOW, DONALD G)
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006